

**Before the
UNITED STATES COPYRIGHT OFFICE
Washington, D.C.**

In the Matter of:

**Transparency of the Mechanical
Licensing Collective and Its Database
of Musical Works Information**

June 8, 2020

Docket No. 2020-8

Comments of the Recording Academy

Introduction

The Recording Academy (Academy) appreciates the opportunity to submit comments regarding the U.S. Copyright Office's Notification of Inquiry (NOI) for Transparency of the Mechanical Licensing Collective and Its Database of Musical Works Information pursuant to implementation of the Music Modernization Act (MMA). The NOI reflects the Office's strong commitment to ensuring that the Music Licensing Collective (MLC) operates with transparency and accountability.

As the only music trade association that represents all music professionals (and no companies), including those involved in the creation of musical works and sound recordings, the Academy has been actively engaged in the formation of the Mechanical Licensing Collective (MLC) and implementation of the MMA to ensure that the rights of all music makers are reflected in any final rule, operational policy, or bylaw governing the MLC. The Academy appreciates that the Office's NOI already incorporates many of the concerns and priorities expressed in the Academy's comments and reply comments submitted in response to the Office's Notice of Inquiry issued on September 24, 2019. Accordingly, and in keeping with the Office's request in the current NOI, the Academy's comments will focus only on specific topics in the NOI that merit additional comment or require clarification.

Categories of Information in the MLC's Musical Works Public Database

Studio Producer

As discussed in its response to the NPRM for Notices of License, Notices of Nonblanket Activity, Data Collection and Delivery Efforts, and Reports of Usage and Payment (Docket No. 2020-5), the Academy applauds the Office’s proposal to define the term producer using the Recording Academy’s Producers & Engineers Wing definition of producer¹ which will provide clarity and uniformity in fulfilling the statutory requirements of the Music Modernization Act regarding inclusion of the data field “producer.” The Academy is also gratified that the MLC has also embraced this proper understanding of the term as consistent with the legislative intent of the MMA.

However, the Academy is concerned that the MLC appears to discount the importance of including the producer field in the database, stating that such information is not “needed operationally.”² The MLC further argues that the identity of the producer is not an essential piece of information for identifying a musical work, and that the MLC’s public database “is not intended to be authoritative on the data pertaining to sound recordings.”³ But this argument ignores the statutory mandate of the MMA that “producer” be included in the data collected for the identification of sound recordings.

The statute clearly recognizes that the producer is an essential part of a complete data set for any sound recording.⁴ Thankfully, both technology and industry practice have advanced to make the goal of complete data attainable. The DDEX Recording Information Notification (RIN) standard enables the capture of metadata such as the identity of the record producer at the point of creation of a sound recording. The RIN standard is compatible with all DDEX standards, so captured data can be included throughout the supply chain of the sound recording. The Producers & Engineers Wing has been active in educating studio professionals about the importance of capturing complete metadata in the recording studio and encouraging the adoption of RIN.⁵

Even so, the Academy acknowledges that the MMA stipulates that producer information should be included “to the extent reasonably available.”⁶ Recognizing that producer information will not always be included in the data obtained by the MLC, the Academy proposes that the MLC should establish a process by which producers can

¹ https://www.grammy.com/sites/com/files/producer_definitions_final_03_01_2019.pdf.

² Reply Comments of the MLC in Response to September 24, 2019 Notice of Inquiry at 35.

³ *Id.*

⁴ Title I of the Music Modernization Act includes “producer” in five different provisions as part of the identifying information for a sound recording. See 17 U.S.C. 115(d)(3)(E)(ii)(IV)(bb), (3)(E)(iii)(I)(dd), (4)(A)(ii)(I)(aa), (4)(B)(i), (10)(B)(i)(I)(aa).

⁵ See <https://www.grammy.com/sites/com/files/pages/basiccreditslist.pdf>.

⁶ 17 U.S.C. 115(d)(3)(E)(ii)(IV).

submit their own information to the MLC for inclusion in the database, to ensure that the database is as robust as possible and fulfills legislative intent.

Additional Information Related to Identifying Musical Works and Sound Recordings

The Academy appreciates the recognition of both the Office and the MLC that additional data fields such as alternative titles or version titles, track duration, and release date are relevant and useful for properly identifying a sound recording and matching it to the appropriate musical work. Given the MLC's expressed concerns about potential overregulation, it is significant that the MLC has agreed to include these fields in its proposed regulations for the public database. Since the MLC has already made this significant concession, the Academy believes that the Office should include these data fields in its regulations as well.

Terminations

The Office inquires whether termination information should be included in the MLC's public database to better identify who controls the rights to a particular musical work. In doing so, the Office references its inquiry in a parallel rulemaking regarding termination rights and server fixation dates. The Academy points to the comments it submitted for that NPRM and restates its concern that the Office's rulemaking in this area could have a substantive impact on the termination rights of songwriters. The Academy requests that the Office set aside any issue related to termination rights and the MLC until it conducts a full and thorough examination of the implications for songwriters and other authors, including an opportunity for public comment.

Sound Recording Copyright Owner Information and Disclaimers

Finally, the Academy is sympathetic to the concerns of the record labels with regard to the proper use and application of metadata attached to sound recordings and understands the potential confusion with regard to the term "sound recording copyright owner." The Academy strongly agrees that the MLC's database should not be used as a source to identify or adjudicate legal ownership of a sound recording between a recording artist and a record label. The Academy maintains that DDEX ERN information is an important source of reliable and authoritative data about a sound recording, but many of the fields serve a distinct purpose in the digital supply chain and do not satisfy the "sound recording copyright owner" field required in the MLC database.

The Academy also supports the use of a disclaimer that would properly contextualize the use of "sound recording copyright owner" and safeguard the legal rights of artists. To assist users in search of additional sound recording data, the

disclaimer could also include a link to SoundExchange's ISRC Search.⁷ Given the complexity and nuance of this issue, the Academy believes the Office should proceed with restraint in promulgating regulations to preserve flexibility and adaptability.

Conclusion

The Academy is grateful for the Office's deliberative and careful approach to addressing the myriad of issues raised by the implementation of the MMA. The Academy looks forward to continuing to work with the Office and stands ready to engage in further discussion regarding any of the issues raised in these comments as needed.

Thank you for your consideration.

Respectfully Submitted,

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⁷ <https://isrc.soundexchange.com>.